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April 21, 1949

Phil A. Isley  
State Dairy Commissioner  
Room 101  
State House  
Phoenix, Arizona

**LAW LIBRARY**  
**ARIZONA ATTORNEY GENERAL**

My dear Commissioner:

In reply to your question:

"Will it be necessary to collect additional license fees from the dairies who have already paid their 1949 license in the amount prescribed by Senate Bill No. 84?"

the above-mentioned Senate Bill No. 84 is now Article 9, of Chapter 50 of the Arizona Code Annotated of 1939.

The term "license" is not involved in uncertainty or doubt. The Courts have defined it, in the case of Blatz Brewing Co. et al v. Collins, et al, 160 P. 2d, 37 at 39, as follows:

"The word 'license' \* \* \* means a grant of permission to do a particular thing, to exercise a certain privilege, or to carry on a particular business or to pursue a certain occupation."

McQuillin Municipal Corporations, Volume 3 at Page 461 is in part as follows:

"The license is the authority to conduct the business or pursue the calling; the right conferred by the public agency which renders the pursuit lawful, and without which it would be unlawful. The law exacting the license, when observed, legalizes the conduct of the business or practice of the profession and constitutes a non-observance an illegal act."

Since our statutes, as they were before the Nineteenth Legislature met, Sections 50-906, 907 and 908, provided for the payment of a certain fee for operating (1) a dairy products distributing plant or business, ten dollars per year license fee, and (2) milk products manufacturing business, ten dollars per year, and (3) producer-distributor or producer-manufacturer, a license fee of ten dollars per year; and since the new law which will be Chapter 54 of the Session Laws of 1949 as far as the question concerned before us merely changed the amount of the fee to that of, in the first two instances, from ten dollars per year to fifty dollars per year, and in the third instance from ten dollars per year to twenty-five dollars per year; and since the old law as well as the new provides that any new license issued shall be for a period ending December 31 next succeeding; and since the old law as well as the new provides that after the first license is issued an annual license may, upon application and payment of a fee of fifty dollars (under the old law ten dollars) be issued for a period beginning January 1 and ending December 31 of each year; and since the people who paid their license fee before March 18, 1949 as the law in existence at that time provided; and since the law, Sec. 50-952, A.C.A. 1939, provides insofar as applicable, as follows:

"Any person who shall produce market milk without permit so to do; or who shall operate a dairy products distributing plant or business without a license so to do; or who shall engage in the manufacture of milk products without a license so to do \* \* \* shall be guilty of a misdemeanor."

It is our opinion that when the state issued a license under all the law in existence at the time it was issued that said license is good for the period of time for which it was issued.

"No statute is retroactive unless so declared therein \* \* \*".  
(Sec. 1-101, A.C.A. 1939.)

In this connection, you are cited to the case of State v. Baker et al, 32 Mo., Page 98, wherein is quoted what the Missouri Court had said on previous occasions as follows:

"Whatever the rule in other states, it has always been held in this state that a license is a privilege purchased from the state, and confers a right which does not exist

without it and that this right, when once vested, cannot be affected by subsequent acts";

then said in summing up the matter, Page 102, supra:

"It is not denied that the city, in the absence of any legal limitation, could exact by its ordinances even a prohibitory tax on dram-shop licenses, but there is no difference in principle between its making such increased tax applicable to a license granted in part, the application for its consummation being then pending before it, and between making it applicable to licenses in full force. It certainly will not be claimed that the latter could be done under the decisions in this state."

In answering your other question, to-wit:

"We have on hand money for two license fees according to Senate Bill No. 84 paid after March 18, 1949, for which no license has been issued. We also have fees for four licenses according to Senate Bill No. 84 paid before March 18, 1949, for which no licenses have been issued. How shall we handle these renewed applications?"

Following the reasoning stated above, and since those four who paid their fees before March 18, 1949 had complied with all the law in existence up to that point, they were entitled to have their license issued to them although they might have been guilty under Paragraph 50-952, A.C.A. 1939.

Now we come to the other two who sent in their money after March 18, 1949 and to a great number who have not applied to date for a license.

Article 9, Paragraph 12, Constitution of Arizona  
says:

Broad Powers of the Legislature

"The law-making power shall have authority to provide for the levy and collection of license

\* \* \* \* \*

"The legislature has full power to impose as many excise taxes, in addition to the ad valorem tax, as it sees fit." Miners & Merchants Bank v. Board of County Suprs., - Ariz. - 101 P. 2d, 461."

Section 1-104, A.C.A. 1939 says:

"When a statute has been enacted and has become a law, no other statute or law, is continued in force because it is consistent with the statute enacted, but in all cases provided for by the subsequent statute, the statutes, laws and rules, theretofore in force, whether consistent or not with the provisions of such subsequent statutes, unless expressly continued in force by it, shall be deemed repealed and abrogated.

\* \* \* \* \*

Under this section, the last expression of the legislature on any subject is the law whether the old statute be consistent therewith or not; the only way by which such provisions of the old law not inconsistent with those of the new dealing with the same subject-matter may be continued is by express language to that effect, and when this does not appear a repeal by implication is the result. Olson v. State, 36 Ariz. 294, 285 P. 282."

In this connection, we desire to quote another definition of a license. This is from the case of Solberg v. Davenport, 232 N.W. 477:

"A license is an authority to do some act or carry on some trade or business in its nature lawful,

but prohibited by statute except with permission of the civil authority, but which would otherwise be unlawful."

Since the Legislature changed the law providing for fifty dollars instead of ten dollars; and since the people who were operating after January 1, 1949 before obtaining a license were operating illegally; and since after March 18, 1949 there is no law upon which the Dairy Commissioner can issue a license other than as provided by the new law, that upon the payment of fifty dollars in the first two instances, and twenty-five dollars in the third instance supra above, we are therefore of the opinion that the parties who made application for a license after March 18, 1949, or may make application in the future, are not entitled to have the license issued to them until they pay the fees as provided by the new law.

Respectfully,

FRED O. WILSON  
Attorney General

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Assistant Attorney General

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